

## Internal Revenue Service

Number: **200638010**

Release Date: 9/22/2006

Index Number: 9100.22-00, 1502.21-00

Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:CORP:B05

PLR-109224-06

Date:

June 15, 2006

### Legend

Parent =

Date1 =

Date2 =

\$X =

Company Official =

Tax Professional =

Dear :

This responds to a letter dated January 31, 2006, requesting on behalf of Parent an extension of time under §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations to file an election. The extension is being requested in order to allow Parent to file an election to relinquish the entire carryback period with respect to the consolidated net operating loss ("CNOL") of the consolidated group of which Parent is the common parent for the Date1 taxable year under § 1.1502-21T(b)(3)(i) (hereinafter referred to as the "Election"). Additional information was received in subsequent correspondences dated April 20, 2006 and April 27, 2006.

The material information submitted for consideration is summarized below:

Parent is the common parent of a consolidated group, which timely filed a consolidated Federal income tax return for the Date1 taxable year.

Parent's consolidated group sustained a CNOL during the Date1 year. The CNOL reported on the Date1 return was in the amount of \$X. The Election to relinquish the carryback period was due on Date2, but for various reasons a valid election was not filed. We have received representations from appropriate parties indicating that no portion of the CNOL has been carried back, or will be carried back, to a prior taxable year. The period of limitations on assessment under § 6501(a) of the Internal Revenue Code has not expired for the taxable year for which the Election should have been filed or for any subsequent taxable year.

Section 1.1502-21T(b)(3)(i) provides that a consolidated group may elect to relinquish the carryback period with respect to a CNOL for any consolidated return year. The election is made in a separate statement entitled "THIS IS AN ELECTION UNDER § 1.1502-21(b)(3)(i) TO WAIVE THE ENTIRE CARRYBACK PERIOD PURSUANT TO § 172(b)(3) FOR THE [insert the consolidated return year] CNOLs OF THE CONSOLIDATED GROUP OF WHICH [insert name and identification number of the common parent] IS THE COMMON PARENT." Section 1.1502-21T(b)(3)(i) provides that the statement must be filed with the group's income tax return for the consolidated return year in which the CNOL arises.

Under § 301.9100-1(c), the Commissioner has discretion to grant a reasonable extension of time to make a regulatory election, or a statutory election (but no more than six months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I.

Sections 301.9100-1 through 301.9100-3 provide the standards the Commissioner will use to determine whether to grant an extension of time to make a regulatory election. Requests for relief under § 301.9100-3 will be granted when the taxpayer provides evidence to establish that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the government. Section 301.9100-3(a).

In this case, the time for filing the Election is fixed by the regulations (i.e., § 1.1502-21T(b)(3)(i)). Therefore, the Commissioner has discretionary authority under § 301.9100-3 to grant an extension of time for Parent to file the Election, provided it shows that its actions were reasonable and in good faith, the requirements of §§ 301.9100-1 and 301.9100-3 are satisfied, and granting relief will not prejudice the interests of government.

Information, affidavits, and representations submitted by Parent, Company Official, and Tax Professional explain the circumstances that resulted in the failure to timely file the Election. The information establishes that Parent reasonably relied on a qualified tax professional who failed to make, or advise Parent to make, a valid Election, the request for relief was filed before the failure to make the Election was discovered by the Internal Revenue Service, and that the interests of the government will not be prejudiced if relief

is granted. See §§ 301.9100-3(b)(1)(i) and (v).

Based on the facts and information submitted, including the representations made, we conclude that Parent has shown it acted reasonably and in good faith, the requirements of §§ 301.9100-1 and 301.9100-3 are satisfied, and granting relief will not prejudice the interests of the government. Accordingly, an extension of time is granted under § 301.9100-3, until 45 days from the date on this letter for Parent to file the Election.

The above extension of time is conditioned on Parent's consolidated group's tax liability (if any) not being lower, in the aggregate, for all years to which the Election applies, than it would have been if the Election had been timely made (taking into account the time value of money). No opinion is expressed as to Parent's tax liability for the years involved. A determination thereof will be made by the Director's office upon audit of the Federal income tax returns involved. Further, no opinion is expressed as to the Federal income tax effect, if any, if it is determined that Parent's liability is lower. Section 301.9100-3(c).

Parent should file the Election in accordance with § 1.1502-21T(b)(3)(i). Parent's consolidated return must be amended to the Election statement. A copy of this letter should be attached to the Election statement. Alternatively, taxpayers filing their returns electronically may satisfy this latter requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

We express no opinion as to the tax effects or consequences of filing the Election late under the provisions of any other section of the Code or regulations, or as to the tax treatment of any conditions existing at the time of, or effects resulting from, filing the Election late that are not specifically set forth in the above ruling.

For purposes of granting relief under § 301.9100-3 we relied on certain statements and representations made by Parent, Company Official, Tax Professional, and other parties under penalties of perjury. However, the Director should verify all essential facts. Moreover, notwithstanding that the extension is granted under § 301.9100-3 to file the Election, any penalties and interest that would otherwise be applicable still apply.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representatives.

Sincerely,

*Ken Cohen*

Ken Cohen  
Senior Technician Reviewer, Branch 3  
Office of Associate Chief Counsel (Corporate)

cc: